

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

July 15, 2002

RESPONSIBLE STAFF:

Trudy Schwarz, Senior Planner

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	06/17/02
Advertised	06/19/02
Hearing Held	07/01/02
Record Held Open	07/10/02
Policy Discussion	07/15/02

TITLE:

POLICY DISCUSSION, Abandonment Application AB-54, An Ordinance requesting to conditionally abandon 0.0093 Acres or 403 sq. ft. of Land Dedicated for Right-of-Way for Meem and West Diamond Avenues, situated in the subdivision known as Meem's Addition, in the City of Gaithersburg, Montgomery County, Maryland

SUPPORTING BACKGROUND:

The Mayor & City Council held a public hearing on this on July 1, 2002. There was no testimony other than the applicant's presentation at the hearing. Enclosed is the transcript of the public hearing, which is the only addition to the record since the hearing. In 1990 this area was dedicated as part of an office development proposal on the property which called for demolition of the existing house. The development was never built nor was the house demolished. This has created a cloud on the title of the property because a portion of the house is in the right-of-way. The owner and his representative have worked with City staff and the State Highway Administration (SHA) to resolve this issue by conditionally abandoning a portion of the right-of-way until there is further development on the property. We have not heard from any of the utilities; however they were all installed within the public right-of-way well before this dedication in 1990.

Both DPWPM&E and the PLANNING COMMISSION reviewed this abandonment petition and recommended that the Mayor and City Council adopt the ordinance approving the abandonment with the condition related to the requests of SHA as incorporated in the ordinance. Attached is the Planning Commission recommendation and the Staff Analysis.

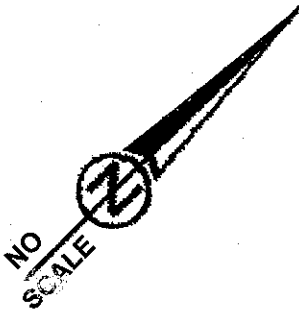
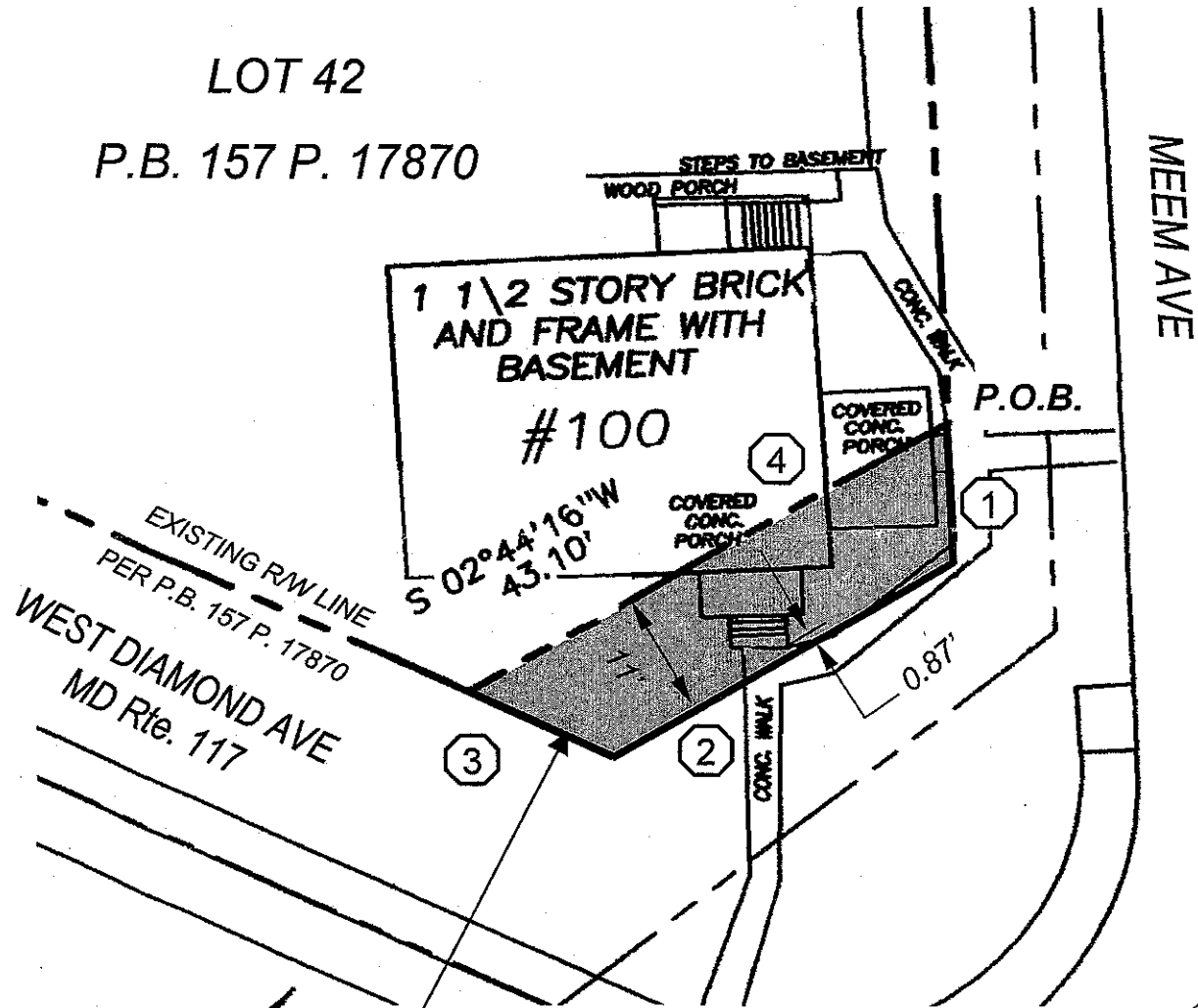
Staff recommends ADOPTION of the ordinance.

DESIRED OUTCOME:

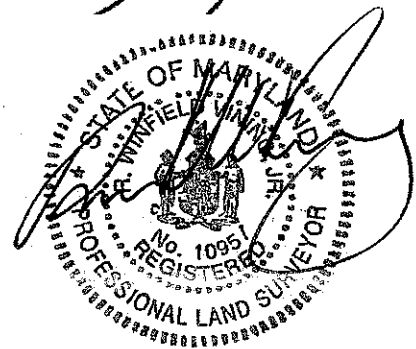
ADOPT Amended Ordinance

LOT 42

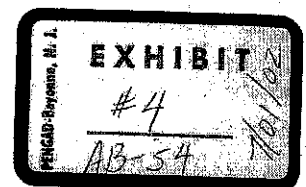
P.B. 157 P. 17870



AREA OF PUBLIC RW
TO BE ABANDONED
403 Sq. Ft. or 0.0093 Ac.



LINE	BEARING	DIST
1	South 56° 48' 33" East	12.76'
2	South 02° 44' 16" West	30.17'
3	South 52° 17' 06" West	12.76'
4	North 02° 44' 16" East	43.10'



TRANSCRIPT OF
PUBLIC HEARING

ON

AB-54

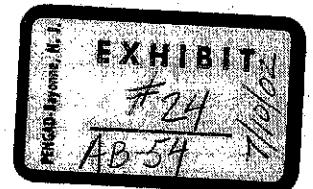
Abandonment Application, an Ordinance to Conditionally Abandon 0.0093
Acres or 403 Square Feet of Land Dedicated for Right of Way for Meem
and West Diamond Avenues at 100 West Diamond Avenue, Lot 42,
Situated in the Subdivision Known as Meem's Addition, in the City of
Gaithersburg, Montgomery County, Maryland

BEFORE THE
CITY OF GAITHERSBURG
MAYOR AND CITY COUNCIL

ON

July 1, 2002

Transcribed by
Doris R. Stokes
July 2002



PARTICIPANTS

CITY COUNCIL

Mayor Katz
Council Member Alster
Council Vice President Edens
Council Member Marraffa
Council Member Schilchting
Council Member Somerset

CITY MANAGER

David B. Humpton

CITY ATTORNEY

Stanley D. Abrams

STAFF

Senior Planner Schwarz

OTHER SPEAKERS

James Clifford, Debelius, Clifford, Debelius, Crawford & Bonifant, Representing the Applicant

Katz The next item is a public hearing on AB-54. Go ahead please, Trudy.

Schwarz Good evening, this is a public hearing on AB-54. The Kao property at West Diamond Avenue. It is a proposal to abandon .0093 acres or 403 square feet of land dedicated for right-of-way for Meem and West Diamond Avenues, situated in the subdivision known as the Meem's Addition in the City of Gaithersburg. The hearing was duly advertised in the June 19, 2002 *Gaithersburg Gazette*. At the present time there are 23 exhibits in the record file. They are reference in an exhibit list in the file. The individual exhibits may be reviewed during the course of the meeting or during the regular business hours of the Planning and Code Administration at City Hall. Any objections to the receipt of any exhibits should be noted prior to the closing of the record; otherwise they will be deemed received in evidence. In order to orient everyone to the site, we have some slides that are going to come on the monitor. This property is located at the intersection of Meem Avenue and West Diamond Avenue. The aerial shows you, the next slide shows you the location of the proposed abandonment right next to the existing house on the property. The survey on the next slide shows the portion of the property proposed to be abandoned by the property owner, who is a proper applicant of abandonment. To bring you down to earth, we have some views on our next slide. This is taken from the intersection of West Diamond and Meem Avenues. The next slide shows the view from Meem Avenue. It's looking from the north and the background that you can see the Water Street apartments. The next slide is taken from West Diamond Avenue and unfortunately, there was a tree that blocked the area, the proposed abandonment. The final slide sought of gives you a pictorial view of the proposed abandonment. That concludes my presentation. Mr. Kao is here and his representative Jim Clifford.

Katz Ok. Thank you very much. Mr. Clifford did you have a presentation?

Clifford I have a very brief presentation. I want to thank you all. I'm James Clifford, I represent the applicant. I want to thank you for scheduling us first tonight. This property is, very quickly, sitting on the corner. My client brought it in the early, the late 70s. Sold it in the late 80s to a gentleman who had grand plans but no money. He subdivided and created the plan that we are trying to reverse right now in some part, because part of the dedication goes right through Mr. Kao's house. He ended up taking it back through foreclosure from a deferred purchase money mortgage. And having done that he now has a piece of property nobody wants to buy, because you can't sell it with a dedication going through the middle of the house. So we have asked the state roads and the City to help us with this abandonment. The state roads have agreed, giving us a set of conditions that are part of this resolution. With that, we ask for your cooperation. Thank you.

Katz Thank you very much. Any questions for Mr. Clifford? Is there anyone in the audience that would like to come forward and speak on this topic? None appearing. It has been suggested that we hold our record open for ten (10) days, which would bring us to July 10, 2002. And this is scheduled for policy discussion on July 15, 2002. What is the pleasure of the Council?

Alster I move that we hold the record open for ten (10) days on abandonment application AB-54.

Marraffa Second.

Katz It's been moved and seconded. All those in favor, please say aye.

Council Ayes (5-0)

Katz Opposed? The record is held open for ten (10) days.

END OF PUBLIC HEARING
AB-54

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

FROM: Planning Commission

DATE: June 20, 2002

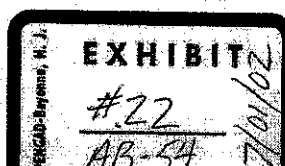
SUBJECT: AB-54 -- The application requests abandonment of approximately 0.093 acres or 403 square feet of land dedicated for right-of-way for Meem and West Diamond Avenues at 100 West Diamond Avenue, Lot 42, Meem's Addition, Gaithersburg, Maryland.

At its regular meeting on June 19, 2002, the Planning Commission made the following motion:

Commissioner Bauer moved, seconded by Commissioner Levy, that AB-54, be recommended for APPROVAL with the following condition:

1. The applicants, applicants' successors or assigns shall rededicate to public use to the extent of the current dedication if the applicants' property is redeveloped in the future or if the State of Maryland requires the property for future right-of-way improvements.

Vote: 4-0



COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Planning Commission

FROM: Trudy M.W. Schwarz, Senior Planner

DATE: June 14, 2002

SUBJECT: AB-54 --The application requests abandonment of approximately 0.093 acres or 403 square feet of land dedicated for right-of-way for Meem and West Diamond Avenues at 100 West Diamond Avenue, Lot 42, Meem's Addition, Gaithersburg, Maryland.

APPLICANT:

James Y. and Wen-Min C. Kao

REQUEST:

The application requests abandonment of approximately 0.093 Acres or 403 sq. of land dedicated for right-of-way for Meem and West Diamond Avenues at 100 West Diamond Avenue, Lot 42, Meem's Addition, Gaithersburg, Maryland.

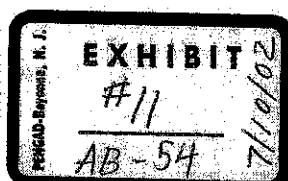
LOCATION:

The subject right of way is located at the northwest quadrant of the intersection of Meem and West Diamond Avenues (MD RT 117).

BACKGROUND:

This subject property was part of the subdivision of Meem's Addition to Gaithersburg. The subdivision plat was recorded in 1896. These properties were single family lots. The 1958 and 1965 Zoning Maps record this property in the R-90 Zone. The 1970 Master Plan shows the property zoned R-T (the City's first townhouse zone). In the late 1970's all R-T properties were converted to the RP-T Zone. In 1980 the City approved a petition of Mr. Kao's to rezone the property from the RP-T Zone to the R-O (Planned Residential) Zone. (Although this zone is titled residential, it allowed professional offices.) As a part of the comprehensive rezoning of Neighborhood 2 following the master planning process, this property was rezoned to the R-B (Residential Buffer) Zone in 1985.

In 1989, a contract purchaser for the property received final site plan approval from the Planning Commission for a 2-story, 7200 square foot office building. The plan called for the demolition of the existing house on the lot. As a part of the site plan process a final subdivision (record) plat was approved with right of way dedication for both Meem and West Diamond Avenues. The plan received an extension of the approval in 1990 and 1991. Following those extensions the site plan approval expired.



The property reverted back to Mr. and Mrs. Kao. The house and property has been utilized either as a residence or as an office for the past twenty years.

The development proposal of 1989 was never built nor was the house demolished. This has created a cloud on the title of the property because a portion of the house is in the right of way. The owner and his representative have been working with City staff and the State of Maryland to resolve this issue by conditionally abandoning a portion of the right of way until there is further development on the property.

The public hearing before the Mayor and Council has been scheduled for July 1, 2002. The property was posted on June 14, 2002 and will be advertised in the *Gaithersburg Gazette* on June 19, 2002. In addition, the required property owners and interested agencies were notified on June 14, 2002.

ADJACENT LAND USE AND ZONING:

North: Located across Meem Avenue is Uncle Bob's Self Storage which is in the I-1 (Light Industrial) Zone.

East: Across West Diamond Avenue (MD RT 117) are apartments in the R-20 (Medium Density Zone) and the Gaithersburg Washington Suburban Sanitary Commission (WSSC) facility in both the RP-T and R-A Zones.

South: The City's Water Tank Park, which has a day care facility. This property is in the R-A Zone.

West: Offices in former residential buildings which are zoned R-B.

STAFF ANALYSIS:

Chapter 19 of the City Code, Streets and Sidewalks, sets forth procedures for abandonment of public rights-of-way (and easements) in Article III. The Planning Commission is required to make a recommendation to the City Council prior to their public hearing.

The City Council may abandon the right-of-way/easement if it shall find from the evidence of record that the right-of-way/easement is no longer necessary for present or anticipated future public use. No right-of-way/easement which provides the sole means of ingress and egress to any property may be abandoned by action of the council without the written consent of the owner of such property.

City Staff has been working with the applicant and the Maryland State Highway Administration concerning this application because of the complexities of this property and the location of the house. SHA has agreed to the abandonment with conditions (See Exhibit #6).

Staff has not received any comments from the utilities concerning this abandonment. There are existing utilities that were in place prior to the recordation of the plat in 1980 and not in the area of the abandonment request. The Department of Public Works, Park Maintenance and Engineering (DPWPM&E) reviewed this abandonment request in relationship to the Meem Avenue project and are of the opinion that this abandonment will not effect this project.

STAFF RECOMMENDATION:

Staff recommends Mayor and City Council hold the record open for 10 days (July 10, 2002.) This would be scheduled for Policy Discussion/Adoption at the July 15, 2002, Mayor and Council Meeting.

In accordance with the request of SHA, approval of this abandonment should be conditioned with the following:

1. The applicants, applicants' successors or assigns shall rededicate to public use to the extent of the current dedication if the applicants' property is redeveloped in the future or if the State of Maryland requires the property for future right-of-way improvements.

ORDINANCE NO. _____

AN ORDINANCE TO CONDITIONALLY ABANDON 0.0093 ACRES OR 403 SQUARE FEET OF LAND DEDICATED FOR THE RIGHT-OF-WAY FOR MEEM AND WEST DIAMOND AVENUES, SITUATED IN THE SUBDIVISION KNOWN AS MEEM'S ADDITION TO GAITHERSBURG, IN THE CITY OF GAITHERSBURG, MONTGOMERY COUNTY, MARYLAND

ABANDONMENT AB-54

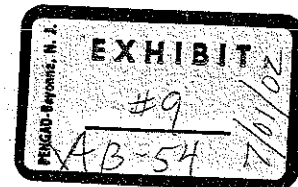
WHEREAS, the applicants, James Y. and Wen-Min C. Kao; as proper parties to initiate this abandonment, applied pursuant to Article III of Chapter 19 of the City of Gaithersburg Code for the abandonment of a portion of property dedicated to public use as recorded in Plat Book 157 at Plat No. 17870, and dedicated by plat of subdivision known as "Lot 42, Meem's Addition to Gaithersburg"; recorded among the Montgomery County Land Records; and

WHEREAS, the area of abandonment includes a portion of land in the Ninth (9th) Election District of Montgomery County, Maryland and being a part of Meem Avenue, as dedicated to public use on a plat of subdivision entitled "LOT 42, MEEM'S ADDITION TO GAITHERSBURG" and recorded in the Land Records of Montgomery County, Maryland in Plat Book 157 at Plat No. 17870 and a shown in "Exhibit A", attached hereto and being, said piece or parcel of land being more particularly described as follows in Washington Suburban Sanitary Commission Datum by Winfield Vinning, Jr., PLS.:

Beginning at a point lying on the southwesterly right-of-way line of said Meem Avenue, said point lying at the at the beginning of the South 02° 44' 16" West 43.10 foot line of Lot 42 of said Plat No. 17870; thence with the southeasterly extension of said right-of-way line

1. South 56° 48' 33" East, 12.76 feet; thence leaving said extension and parallel with said 43.10 foot line
2. South 02° 44' 16" West 30.17 feet; thence
3. South 52° 17' 06" West, 12.76 feet to a point on the northwesterly right-of-way line of West Diamond Avenue as shown on aforesaid Plat No. 17870, said point lying at the end of aforesaid 43.10 foot line; thence reversely with said line
4. North 02° 44' 16" East, 43.10 feet to the point of beginning.

Containing 403 square feet or 0.0093 acres of land (hereinafter, "The Property").



WHEREAS, the computed area of the right-of-way to be abandoned is approximately 403 square feet or 0.00093 acres; and

WHEREAS, the Mayor and City Council finds that the existing right-of-way is no longer necessary for present vehicular, pedestrian, or other right-of-way use by the general public, and does not provide the sole means of ingress and egress to any property; and

WHEREAS, the Mayor and City Council finds that there are no existing easements necessary for present use; and

WHEREAS, the Mayor and City Council finds that in accordance with the position of the Maryland State Highway Administration, that dedication at least to the extent of the current dedication will be required if the property is redeveloped in the future; and

WHEREAS, the Mayor and City Council finds the owners agree to donate free of charge the present dedicated land to the Maryland State Highway Administration, if and when it is needed for a future public project, or improvements; and

WHEREAS, a duly advertised public hearing on said application was held by the Mayor and City Council, and the City Planning Commission have submitted a recommendation supporting the abandonment to the Mayor and City Council; and

WHEREAS, the Mayor and City Council have received comments concerning the abandonment request in a letter dated December 6, 2001 from Maryland State Highway Administration; and

WHEREAS, the Mayor and City Council have received no request for further hearings on this matter, and there have been no objections to the abandonment; and

WHEREAS, the Mayor and City Council have concluded that no further hearings are necessary to resolve this matter:

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of Gaithersburg, Maryland, in a public meeting assembled, finds that the above described area dedicated to public right-of-way use containing 0.0093 acres or 403 square feet of land is no longer necessary for present public use for right-of-way purposes, that the area does not provide the sole means of ingress/easement to any property and hereby declares said property to be abandoned, vacated and released subject to the following condition:

(1)The applicants, applicants' successors or assigns shall rededicate to public use to the extent of the current dedication if the applicants' property is redeveloped in the future or if the State of Maryland requires the property for future right-of-way improvements.

ADOPTED this _____ day of _____, 2002, by the City Council of Gaithersburg, Maryland.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this _____ day of _____, 2002. APPROVED/VETOED by the Mayor of the City Council of Gaithersburg, this _____ day of _____, 2002.

SIDNEY A. KATZ

Mayor and President of the City Council

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of the City of Gaithersburg, in public meeting assembled, on the _____ day of _____, 2002, and the same was (Approved/Vetoed) by the Mayor on the _____ day of _____, 2002.

This Ordinance will become effective on the _____ day of _____, 2002.

David B. Humpton, City Manager